In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 966

EVERETT S. HAMMAN, ET UX., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. i-vii) is reported at 340 F. 2d 145.

JURISDICTION

The judgment of the court of appeals was entered on January 5, 1965, and a petition for rehearing was denied on February 16, 1965 (Pet. App. viii, ix). The petition for a writ of certiorari was filed on March 8, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the jury's verdict.

2. Whether, in a trial for the willful attempted evasion of 1956 and 1957 income taxes, the trial court erred in admitting evidence of petitioners' understatement of income on their tax returns for 1954 and 1955 as bearing upon petitioners' intent.

STATEMENT

Petitioners were indicted in the United States District Court for the Northern District of California for willful attempted evasion of their income tax for the years 1956 and 1957 (1 R. 1-3).[1] After a jury trial petitioners were acquitted on the count relating to 1956 and convicted on the count relating to 1957. Everett Hamman was fined $10,000; he was sentenced to six months' imprisonment and four and one-half years' probation. Clella Hamman was sentenced to five years' probation (1 R. 19-20). The evidence may be summarized as follows:

In 1952 petitioners purchased a 14-unit motel at Fort Bragg, California (R. 159-160). Both petitioners worked at the motel (R. 655-656, 886-887), which, beginning in 1953, expanded its operations in each

[1] The designation "1 R." refers to Vol. 1 of the record filed in this Court, consisting of the indictment, docket entries, motions and court orders, the verdict and judgment and the proceedings in the court of appeals. The designation "R." refers to the remaining seven volumes of the record, which comprise the transcript of the trial.

year through the acquisition of new rental units, carports, furnishings, and other equipment (R. 399-405). Both petitioners participated in keeping the books of the business (R. 219, 319, 339), which were conceded by their expert witness at the trial to be inaccurate (R. 966).

The government, proceeding by the net worth method, introduced evidence that from the beginning of 1954 to the end of 1957 petitioners' net worth increased from $28,981.05 to $90,495.79, and that during that four-year period they reported on their income tax returns a total of $3,002.34 of taxable income and $600.47 of tax liability (Pet. App. iii; Govt. Ex. 35, p. 2; R. 416-417). The reported and corrected taxable income for each year was as follows (R. 416-417; Govt. Ex. 35):

Year	Reported	Corrected	Unreported
1954	$1,775.30	$20,590.04	$18,814.74
1955	-0-	4,566.01	4,566.01
1956	1,227.04	17,937.70	16,710.66
1957	-0-	5,463.32	5,463.32
Totals	$3,002.34	$48,557.07	$45,554.73

Petitioners had never received gifts or inheritances which would have accounted for the increase in their net worth (R. 319, 338), and the net worth figures were adjusted to reflect the only nontaxable income petitioners received (R. 338, 411-413; Govt. Ex. 35, p. 2).

Other evidence established that petitioners did not have undeposited cash on hand in excess of the $2,000 credited to them in the government's summary (R.

337); that Everett Hamman had borrowed money from a bank at 6 percent interest at a time when, according to his testimony at the trial, he had $18,000 in cash on hand (R. 727, 744-745, 813-816); and that in 1948 he had represented to the Veterans Administration that he was financially unable to pay hospital expenses (R. 818-820). It was also shown that during the Treasury agents' investigation petitioners had made false statements as to the source of their net worth increases. Everett Hamman had first stated that he had received $12,000 in cash from his brother-in-law as repayment for a loan during 1956 and 1957 and that the money had been deposited in petitioners' bank accounts. Hamman subsequently said that the $12,000 had not been deposited but had been invested directly in real estate (R. 221-222, 319). At the trial, the brother-in-law testified that he had never made any such payment (R. 331-333). Hamman also asserted at one stage of the investigation that he had received between $8,000 and $9,000 from the sale of a house in 1952; in fact, he had received less than $1,000 in that transaction (R. 317-318, 337; Govt. Ex. 25).

ARGUMENT

1. There is no merit to petitioners' contention (Pet. 8-13) that the evidence was insufficient to support the verdict under the standards set down in *Holland* v. *United States*, 348 U.S. 121. The opening net worth was calculated as of December 31, 1953, and the total value of petitioners' assets for each succeeding year

was computed on the basis of evidence from third parties and admissions by petitioners. The district court and the court of appeals were satisfied that the opening net worth for 1957 was, by this method, "establishe[d] with reasonable certainty" (Pet. iv), and the improvements made on petitioners' motel during that year established a significant increase in net worth.[2] As in *Holland*—where the likely source of the added revenue was a going hotel business—it was quite clear on this record that the source of petitioners' income was their taxable motel operation. And the element of willfulness was more than adequately proved by Mrs. Hamman's false statement to petitioners' accountant that any excess of expenditures over income for 1957 was attributable to petitioners' use of their savings (Govt. Exs. 6, 7, 35, p. 3). The inference of guilt was further supported by the false explanations given by petitioners to the investigating agents.

2. Nor is there any merit to the claim that it was error to allow the presentation of evidence of understatements of income in pre-indictment years (Pet. 4-8). Such evidence was limited to the issue of intent, and it was clearly permissible for that purpose. It showed that the failure correctly to report petitioners' profits in 1956 and 1957 was not the result of oversight or neglect but was part of a pattern of conduct

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[2] The breakdown of the government's computation was precise enough to render a difference of about $7,000 in total assets adequate for conviction (Pet. iii). There is no substance to petitioners' claim that this is an insufficient "approximation" (Pet. 8-9).

which began shortly after petitioners purchased their motel property. See *Ballantyne* v. *United States*, 293 F. 2d 112, 114 (C.A. 5th), certiorari denied, 369 U.S. 802; *United States* v. *Frank*, 245 F. 2d 284, 287-288 (C.A. 3d), certiorari denied, 355 U.S. 819; *Mitchell* v. *United States*, 213 F. 2d 951, 958 (C.A. 9th), certiorari denied, 348 U.S. 912; *United States* v. *Sullivan*, 98 F. 2d 79, 80 (C.A. 2d); *Malone* v. *United States*, 94 F. 2d 281, 286-287 (C.A. 7th), certiorari denied, 304 U.S. 562; *Emmich* v. *United States*, 298 Fed. 5, 9 (C.A. 6th), certiorari denied, 266 U.S. 608; 2 Wigmore, *Evidence*, § 302-304, 316, 341 (3d Ed., 1940).

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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